



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Judge Robert J. Miller

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CONSOLIDATED RAIL CORPORATION
a/k/a CONRAIL,

Defendant and
Third Party Plaintiff,

vs.

PENN CENTRAL CORPORATION, et al.,

Third Party Defendants.

CASE NO.:
S90-00056

The deposition of JAMES HUPP

Date: Thursday, January 14, 1993

Time: 1:00 o'clock p.m.

Place: 205 West Jefferson Boulevard
South Bend, Indiana

Called as a witness by the Plaintiff
in accordance with the Federal Rules of Civil
Procedure, pursuant to agreement as to date,
time and place and notice duly served.

Before Teresa L. Gemmel
Notary Public, State of Indiana

1 MR. PETER H. RUVOLO, ESQ.
2 Trial Attorney
3 Environmental Enforcement Section
4 Environment and Natural Resources Division
5 United States Department of Justice
6 P.O. Box 7611 Ben Franklin Station
7 Washington, D.C. 20044

8 For the Plaintiff;

9 MR. JAMES A. ERMILIO
10 Bingham, Dana & Gould
11 Suite 1200
12 1550 M. Street, N.W.
13 Washington, D.C. 20005

14 For the Defendant and Third Party Plaintiff;

15 MR. PIERCE E. CUNNINGHAM
16 Frost & Jacobs
17 2500 Central Trust Center
18 201 East Fifth Street
19 Cincinnati, OH 45202

20 For the Third Party Defendant.

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I N D E X

THE DEPOSITION OF

JAMES HUPP

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PLAINTIFF'S EXHIBIT NO.

MARKED

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1 JAMES HUPP,
2 called as a witness by the Defendant, being
3 first duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. RUVOLO:

7 Q Would you state your full name please, Mr. Hupp.

8 A James F. Hupp.

9 Q And your address?

10 A (b) (6)

11 Q And a telephone number you can be reached at
12 generally? Home number?

13 A (b) (6)

14 Q How long have you lived in Elkhart?

15 A 1974 I moved to Elkhart.

16 Q And do you live far from the Conrail facilities?

17 A I'm about ten miles now.

18 Q Are you familiar with what this case is about?

19 Have you read anything in the newspapers or?

20 A Yes.

21 Q I know you've talked with your attorney, but I
22 don't want to know anything about that
23 conversation. But, you've read about the case in
24 the newspapers?

25 A Yes, sir, I have.

1 Q Okay. Have you talked about it with some of your
2 co-employees?

3 A Yes, sir.

4 Q Okay. You know that it is a civil action and not a
5 criminal action?

6 A Yes, sir.

7 Q And that it's for money and not seeking to do
8 anybody any personal harm. Did you know that?

9 A Yes, sir.

10 Q Have you ever been deposed before?

11 A No, sir.

12 Q Okay. If I ask you something that you don't
13 understand or you need clarification, don't
14 hesitate to let me know. If you don't hear me, let
15 me know, okay? Because I do have a low voice.

16 If you need a break every once in a while,
17 give us -- just give us a nod, and we'll try to
18 comply with that, okay? You just sit back, relax
19 and take it easy.

20 Okay. Tell us a little bit about yourself.
21 Where did you go to school and when you went to
22 school and?

23 A I went to school, and most of it was in the
24 township, Penn Township area. I moved to Mishawaka
25 in the city limits in '61. I graduated from high

1 school at Mishawaka in '64. Married in '65. Hired
2 out on the railroad under Penn Central in 1972.

3 Q And is that -- okay, what did you do between, say,
4 '64 and '72?

5 A Self-employed. I had two service stations.

6 Q Gasoline service stations?

7 A Gasoline.

8 Q In '74 you said you started out with -- '64. I'm
9 sorry.

10 A '72 I hired on with Penn Central.

11 Q '72.

12 And as what?

13 A I hired out as a car inspector repairman. In '74 I
14 was promoted to agreement supervisor.

15 Q I'm sorry. What supervisor?

16 A Agreement.

17 Q Agreement?

18 A Agreement foreman, yeah.

19 '76 -- January of '76 still under Penn
20 Central. I was promoted as a non-agreement
21 supervisor and transferred to Toledo.

22 '78 I was transferred to Chicago still as an
23 agreement -- or not agreement. Late '79 I was
24 transferred back to Elkhart as a non-agreement, and
25 I was a general foreman. 1980 I resigned and went

1 back as agreement supervisor. I've been at Elkhart
2 yet ever since.

3 Q As an agreement supervisor?

4 A Yes.

5 Q Okay.

6 Tell me a little bit about your duties as a
7 car inspector back in '72.

8 A Well, as a car inspector I worked in the outbound
9 train yard.

10 Q And you would inspect the cars for what? For
11 damage? For battery operation? For what purpose?

12 A Well --

13 Q What were you looking for, in other words?

14 A As an outbound inspector, I worked the outbound
15 trains. I blocked up the hoses, inspected cars for
16 hump damage, physical damage, safety appliances.

17 Q Okay.

18 A And that's about it -- gave the air test, let the
19 trains go.

20 Q Okay. Did you inspect for seepage or leakage or
21 damage to the valves or anything of that nature at
22 all in these cars?

23 A That comes along with an inspection, yes.

24 Q That's part of the inspection.

25 And how many cars in the course of a day, for

1 example, would you inspect at that time, roughly?

2 I'm looking for a guestimate. You don't have
3 to count them.

4 A 100 cars, 125 cars a day per man, I suppose.

5 Q Okay. And how long would it take you to inspect a
6 car?

7 A Between three minutes -- two and a half minutes,
8 three minutes, depending on whether it had to have
9 any repairs done to it, brake shoes or hoses.

10 Q Did you make immediate repairs if you could?

11 A We made the repairs at that -- you mean that kind
12 of repair?

13 A brake shoe or an air hose were made at that
14 time by myself.

15 Q And if it needed any major repairs, it would go to
16 a car barn or something of that nature?

17 A Yes.

18 Q You never -- you -- so far up through now, you
19 have -- you've never worked in the car barn or area
20 or done major repairs of that nature?

21 A In the repair track, we broke in there. That's
22 where we were hired out. We worked the first
23 couple of weeks in there. But, you had to have
24 seniority at that time to work in the Car Shop.

25 Q And, while you were -- this break-in period in the

1 Car Shop, were you familiar with any products that
2 were used for making the repairs?

3 I mean, other than the machinery, itself.
4 Would there be cleaning fluids or cleaners or?

5 A Not to make the repairs. We used a solvent or a
6 cleaning fluid that we scrubbed the rip down with.

7 Q And the rip down is the area that --

8 A Which would be the floor of the Car Shop area, yes.

9 Q Floor of the Car Shop.

10 And that would then flow into a -- how would
11 that leave the Car Shop?

12 A That was scrubbed down with brooms, and then you
13 washed it down with a fire hose, just washed it out
14 in the stones.

15 Q And it would seep down, okay.

16 In '74 you said general -- agreement foreman.
17 Tell me. What did that entail?

18 A Well, then -- I mean, you've got to let me
19 remember. '74 is a long time ago for me.

20 Q Oh, sure. Take your time. Take your time.

21 A I was promoted as a -- as an agreement foreman, and
22 I worked the train yard like a vacation relief.
23 When a -- when a foreman would go on vacation, I
24 filled their vacation.

25 Q I see.

1 A And then sometime in '74, whenever the -- the FRA
2 program went on to where we did -- well, like a
3 medium repair to a car. In other words, Penn
4 Central was going to upgrade all their cars, so
5 they put on a -- upped to FRA standards. Then I
6 went to work. It was third trick with Tuesdays and
7 Wednesdays off in the Car Shop for that program.

8 Q I see.

9 A I was there. There were four people put on -- four
10 supervisors put on. Well, four jobs went up for
11 bid, and I caught the one third trick, and I worked
12 that up until the time I transferred out of there
13 in '76.

14 Q And in that position, did you or anybody on your --
15 in your department use chemicals or cleaning fluids
16 or cleaners or?

17 A Just -- just the soap that we washed the rip down
18 with.

19 Q Okay. In '76 was a non-agreement?

20 A Yes.

21 Q Supervisor.

22 Now, what does that entail? That's
23 contrasted with an agreement foreman?

24 A Well, that's when they can really mistreat you.

25 Well, I transferred to Toledo as a general

1 foreman.

2 Q Okay.

3 A So then I was over all the super -- all the
4 agreement supervisors, plus all the car inspectors,
5 plus all the car repairmen.

6 Q Okay. And then the same thing in Chicago?

7 A Yes.

8 Q And the same thing in Elkhart?

9 A Yes.

10 Q And then in -- you said you resigned in '80 and
11 then came back?

12 A Yes, I resigned. Well, I was transferred back to
13 Elkhart as a general foreman.

14 Q Okay.

15 A As a non-agreement. And then I took -- I took just
16 about all I could take, and then I was back home.
17 I resigned and went back as an agreement
18 supervisor, bumped back into the craft.

19 Q And did that keep you close to the home? Was that
20 the idea behind it?

21 A I was closer to home, and my wife was tired of
22 moving.

23 Q And you've been that since?

24 A Yes.

25 Q And you're still employed there?

1 A Yes.

2 Q Going back again a little bit; after high school
3 did you take any courses or seminars or training
4 programs at Penn Central and/or Conrail?

5 A Courses as far as what?

6 Q Well, how to make out reports, how to -- some
7 training program that you might -- management
8 program, anything of that nature?

9 A I went through a couple of schoolings that they had
10 in Altoona and Hollidaysburg.

11 Q Altoona is where the --

12 A Where the engine repair shop is, yes, sir.

13 Q And --

14 A And the other -- the Hollidaysburg was the car shop
15 and wheel shop.

16 Q And these are programs that -- how to take them
17 apart or mechanical?

18 A Yes.

19 Q Did you ever take any courses dealing with
20 hazardous materials or?

21 A No, sir.

22 Q How to handle them? What happens if they --

23 A No, sir.

24 Q Okay.

25 MR. RUVOLO: Can we mark this as 1?

(Plaintiff's Deposition Exhibit No. 1
marked for identification.)

Q (Continuing) I'll show you what we'll call
Plaintiff's Exhibit 1, which is, as you can see, a
map showing the Conrail facilities in Elkhart. And
if you will notice, there are various buildings on
the property; West Tower, Hump Tower, et cetera.

As far as structures are concerned, during
the period of time that you were at the yard, say
from '72 to today, have there been any major
structural changes to the yard?

A Oh, yes. I mean, as far as what it was in '72
compared to what it is now, yes.

Q Have there been additional tracks added?

A Yes.

Q Okay. Roughly any idea of how many?

A I'll take this back as far as tracks added.
There's always been 72 class tracks, which is 9
groups of 8 -- 8 groups of 9, excuse me. They
extended this yard so it would have been like
groups 5, 6 and 7 was all extended.

Q And you're indicating down at the southern --

A Which would be --

Q (Continuing) -- portion of the yard?

A Yeah, right.

1 Q North of Mishawaka -- is it Mishawaka Road?

2 A Mishawaka Road, yes.

3 South tower was added. There's a north tower
4 over here that's been added.

5 Q Do you know when the south tower was added?

6 A Exactly, no.

7 Q Approximately?

8 A In the -- in the 80's. I would say '85, '86, '87;
9 somewhere in there both towers -- both new towers
10 were added.

11 Q Okay. Would you do me a favor and just take this
12 pen and put an "X" where the new tracks were added
13 and/or a circle and No. 1?

14 A It's hard to tell there because you've got it
15 shaded. See, what they did was they extended the
16 groups so the -- so the tracks would hold more
17 cars. But this right in here would have been
18 groups 5, 6 and 7. These three right here would
19 have been extended out.

20 Q Okay. Just take the pen and make an arrow down
21 there and put a circle with a "1" in it.

22 How's that?

23 Now, the two new towers that were added,
24 would you mark those 2 and 3?

25 Any other changes?

1 A Oh, yes. I forgot about -- you're talking about
2 adding tracks. They added one track in the W-yard
3 They added two tracks in the W-yard. The westbound
4 yard was always 1 through 5, and then the two
5 cleaning tracks and then an inbound runner.
6 They've added Tracks 6 and 7.

7 Q Okay. Make that No. 4 if you would.

8 Any other changes?

9 A You know, I really don't know about it. The only
10 new thing other than that is -- is the diesel --
11 the fuel pad assembly, and I don't really know that
12 much about that. I have -- have -- I've never
13 worked that side of the yard anymore hardly, and I
14 don't really know what they -- all they added.

15 They put a fuel pad in to fuel engines on the
16 main line, mostly your van trains and your mail
17 trains so they don't have to stop them. They just
18 pull them in, stop them long enough to fuel them,
19 and that's -- I think it's on the map. Here's the
20 Diesel Shop.

21 Q Would that be along County Road 1?

22 A No, that's right out on 33.

23 Q On 33?

24 A Straight across from the Hump Tower -- I can't
25 hardly read what all that is.

1 Q I appreciate that.

2 A I don't really -- main line fuel, so it's on
3 this -- it's written right here, so wherever
4 they're showing it at. That -- you know, that's a
5 new -- that's been within the last four or five
6 years.

7 Q Okay. Just general area, put a "5" if you would.

8 Now, as a car inspector, where would you be
9 assigned in the yard?

10 A Well, for the best part of the time I was a car
11 inspector? Because, really we had -- you've got
12 two yards -- you've got three yards. You've got a
13 receiving yard. You've got the eastbound yard.
14 You've got the westbound yard.

15 Q Okay.

16 A Most of the time that I was a car inspector I
17 worked in the westbound yard.

18 Q Okay. Now, those -- that would be the yard in
19 which the trains are leaving westbound?

20 A Yes.

21 Q That's not a receiving yard?

22 A No, that's a departure -- westbound departure yard.

23 Q Westbound departure yard.

24 A Most trains that go out of there are going west.

25 Q And, as an agreement foreman, where would you be?

1 Where are you assigned?

2 A I was all over because I was vacation relief.
3 Whenever one of the eastbound foremen was on
4 vacation, I filled his job. If the westbound was
5 on vacation, I filled his job. Receiving yard
6 foreman -- back then we did have a receiving yard
7 foreman. I filled his job.

8 And then when I did bid -- actually bid a job
9 in and got out of the yard, then I went to work in
10 the shop third trick.

11 Q Okay. You notice there are some buildings that are
12 shown on the lower ledger.

13 Did you ever work in any of those buildings;
14 the dorm, for example?

15 A We worked out of the dorm as car inspectors.

16 Q Okay. That would be your base, I take it?

17 A Yes.

18 Q Okay. And the hump, did you ever do any work in
19 the hump?

20 A I've been to the hump quite a bit taking mail back
21 and forth, picking up mail. I've been in the
22 yardmaster's shanty. I've been in just to go up
23 and -- and see them. And I used to like to go up
24 the top of the tower as a supervisor after -- and
25 watch the cars go over the hump.

1 Q But you never worked out at the hump?

2 A No.

3 Q You never manipulated the trains?

4 A No.

5 Q How about the Retarder Tower?

6 A No, we never had anything to do with the Retarder
7 Tower.

8 Q Okay. Diesel shop?

9 A There was one portion of the Diesel Shop that the
10 Car Department worked out of because that was an
11 easy access from the Diesel Shop to the eastbound
12 yard, so the one end of the yard did. Then
13 inspectors back years ago worked out of the Diesel
14 Shop.

15 Q What was the function of the Diesel Shop, if you
16 know?

17 A Well, other than that the inbound power all comes
18 in there and gets refueled, sanded and then leaves
19 out of there to get -- to be outbound power. Other
20 than that, I really don't know what goes on at the
21 Diesel Shop.

22 Q You don't know what products they use?

23 A No.

24 Q Or how they work it?

25 How about the Car Shop?

1 A What we do at the Car Shop?

2 Q Were you ever assigned to do work in the Car Shop?

3 A Yes.

4 Q And what did you do?

5 A Well, as an inspector repairman, I repaired cars.

6 MR. CUNNINGHAM: Can we have the years
7 please?

8 Q Inspector repairman?

9 A That would have been after -- well, between '72 and
10 '74, off and on. Whenever I could hold a job in
11 the Car Shop, I always liked working around
12 repairing cars and the torches and the welding
13 rather than being an inspector or walking the
14 train. So if I could hold a job, that's where I'd
15 like to work the most but.

16 Q Is that where the general car foreman is --

17 A Is located, yes.

18 Q (Continuing) -- located?

19 And the B & B Shop?

20 A The B & B Shop is behind the Car Shop.

21 Q It's behind the Car Shop.

22 What type of repairs would be made on cars?

23 A Are you talking --

24 Q We're talking '72, '74 when you were in the Car
25 Shop.

1 A Okay. '72 and '74, in that area we -- just wasn't
2 nothing major repairs at that time being done. I
3 mean, anything -- all safety appliances repaired.
4 Your air dates, your repacks on your friction
5 bearings.

6 We did have a back track back there that did
7 heavily damaged cars that -- to make them so they
8 was able to get back on the road and get back home
9 or to get to where -- if it was a sister car, to
10 one of our back shops.

11 Q Would the -- would the repairs generally have to do
12 with the operation of the car, or would you also
13 deal with damage to the carrying part of the car,
14 if I make myself clear?

15 A Damage, anything that was -- we call them FRA,
16 defects or safety appliances. Anything that would
17 keep the car from running safely, yes, we did the
18 repairs.

19 Q Suppose the car was involved in a derailment, for
20 example, and tipped over; and as a result of being
21 tipped over, slided or got pushed in or something
22 of that nature. Would you make that repair?

23 A No, sir. That's not involved in -- we'd make the
24 repairs to the side ladders, the steps, the safety
25 appliances. If it was a foreign railroad, we'd get

1 disposition and send it home safely. We'd do
2 everything we had to do to it to make the car safe
3 to run.

4 If it was one of our cars damaged too bad, it
5 was either loaded up on other equipment and sent to
6 the back shops, or we sent it -- got it fixed up
7 good enough to make it to the back shop on its own
8 wheels.

9 Q If a car had a hole in it, for example a puncture
10 hole in it from a coupling accident or something,
11 would you repair that?

12 A No, Elkhart's never been equipped to do anything
13 other than safety appliances because you're
14 damaging safety appliances if you got -- if you got
15 to the end of the car or something and caved it in,
16 you've got --

17 Q But if a -- if a car had a -- a gasket that was
18 defective or something and was leaking or
19 something, you would replace that?

20 A Yes, sir.

21 Q In your experience with the cars -- I'm talking
22 about the same period now. In your experience with
23 the cars, which one would be more likely to suffer
24 damage if either a tank car or a flatcar or?

25 A You're talking about Elkhart hump?

1 Q Yeah.

2 A I would imagine a tank car, depending on which end
3 of the tank car, because your air brakes are all on
4 one end of the car. Tank car, the air brakes are
5 all at the end of it instead of down underneath
6 them or on the side of them because there's no
7 place to put them.

8 If you damage the B end of the tank car,
9 you've done a lot of damage. You've done the air
10 brake damage then, plus what damage you've done to
11 the tank, safety appliances, the running boards,
12 the crossover boards.

13 Q A tank car is generally smaller than the --

14 A Yes, they're a shorter car, yes.

15 Q Is there any system that you know of in placing a
16 car, tank car, in the train line?

17 You know, do they put it towards the back?
18 The middle? The rear? The front?

19 A No, the only thing, you cannot have it within seven
20 cars from the head on the train. And now there is
21 no limitation on the rear of the train because
22 you're not carrying a caboose. It used to be five
23 cars ahead of the caboose.

24 Q And going back to what you said about the damage to
25 the tank cars more likely to suffer damage, would

1 that be because in the humping process that
2 particular end of the tank car was being coupled?

3 Well, actually both of them would be.

4 A Well, that's what I said. It depended on which end
5 of the tank car got -- got damaged. If it happened
6 to be the B end or the air brake end, yes, that's
7 very expensive to repair so there's, therefore,
8 more -- cost-wise, more damage.

9 Q In your experience would the damage more likely
10 come from the tank car coupling with the car it's
11 going into, or would it be from the car that's
12 coming down the hump up into the tank car?

13 A I would say the car coming down off the hump to
14 couple into the tank car.

15 Q Are you aware of any tank cars that were damaged
16 because of the coupling or?

17 A Oh, we've had tank car damage, yes.

18 Q Many? Few? Lots? None?

19 I mean, you said some.

20 A I don't really understand what you mean by lots.
21 In the wintertime, the hump at Elkhart, you get car
22 damage. You get tank cars. You get covered
23 hoppers. You get just about everything.

24 As far as there being a lot of tank cars, no,
25 sir, I've never been involved in a lot of tank car

1 damage.

2 Q Would it be fair to say that they get damaged more
3 than the other cars, in general?

4 A No, I wouldn't say that either.

5 Q Okay.

6 Okay, after '74 you went to Toledo and then
7 Chicago, and then you came back in '79 as a general
8 foreman. And where would your assignment be at
9 that time? What -- what area? What building?

10 A At the Car Shop.

11 Q At the Car Shop.

12 A Yes.

13 Q Okay. Performing the same functions and duties
14 that you previously told us about?

15 A Well, I was -- I had foremen underneath me.

16 Q How many foremen?

17 A At that time we had 25 supervisors.

18 Q Are any of the supervisors that were working at
19 that time, say in '79, '80, still employed at the
20 yard?

21 A '79 and '80?

22 Most of them would still be there. I don't
23 know if they're still working there as a
24 supervisor. I'm saying the people are there, yes.
25 We had a few big turnovers.

1 Q Can you -- can you give me the names of a couple of
2 other supervisors that were there with you in 1980,
3 sir?

4 A 1980 or 1974? When I went back as -- when I went
5 back as a supervisor, or are you talking about when
6 I was --

7 Q When you went back.

8 A Jim Thimlar's out there. He's the Car Shop
9 supervisor now. Larry Miller, he moved for them
10 quite a bit of times. He came back in there
11 somewhere in that time and left again, and he's
12 back. Clayton Powers, he's No. 1 on the seniority
13 list. He's been there forever. That's about it
14 because a lot of the other supervisors was through
15 the closing of Fort Wayne Yard transferred up here.

16 Q Now, other than the washing down of the car pit, et
17 cetera, how are the other products that were used
18 in the Car Shop disposed of, such as oil cans or
19 whatever?

20 A There's a dumpster -- well, there's a dumpster
21 where the rubbish goes. There's a -- there's a --
22 you're talking about -- that's what I don't
23 understand what you're disposing of. Oil cans
24 or -- we don't -- we don't use oil; only bulk oil
25 that we put in the vehicles.

1 The general oil that we oil the cars with
2 come in bulk 55 gallon drums. When them are empty,
3 they go back down to the Storage Department.
4 Storage Department loads them up and sends them
5 back to Hollidaysburg.

6 Q Where would you find 55 gallon drums of oil around
7 the yard other than in the Car Shop area? I mean,
8 is there any other place that they use them?

9 A Used to -- the receiving yard used to have oil
10 stations set up to where you'd pump oil into a can
11 and then go and pour it in the journal boxes.

12 But they've almost -- they've cleaned up all
13 the barrels. Now they've got a -- I don't know
14 what you want to call it. It's a 2 hundred gallon
15 container enclosed, and there's a lock on the lid
16 so that nobody can get in it and open it up and let
17 the water in there, and they're pumping it out of
18 that.

19 But the journal boxes are almost done and
20 over with. We don't oil cars nowheres near what we
21 did back in the 70's.

22 Q They're all sealed up now?

23 A Yeah. You're using oil bearing equipment now
24 instead of the old friction bearings.

25 Q The receiving yard you mentioned, is that the

1 area --

2 A Yeah, that's back here between Oakland Avenue and
3 the dorm --

4 Q Okay.

5 A (Continuing) -- is the receiving yard.

6 There's 15 tracks in there.

7 You see this little middle area?

8 Q Right.

9 A There's a few stations set up there, and down
10 the -- what's that road called?

11 It's -- it's just a north road to the
12 receiving yard. There's an oil station set up
13 there. The same way with this road this side of
14 the receiving yard. There's a few there.

15 Q Just put a little circle around that area, please.
16 No. 6 I think it would be.

17 And as far as the materials that went into
18 the dumpster, what would they consist of?

19 A It would be just rubbish -- rubbish, smashed up oil
20 cans that have got smashed by someone. I'm not
21 talking about oil cans. I'm talking about a two
22 gallon container with a spout on it and old journal
23 pads.

24 Q How about any materials that might have been found
25 in the car?

1 A No, we didn't clean the cars there. We had a
2 regular facility, and they had an outside
3 contractor they hired that disposed of all that
4 himself. He had a dump permit. He went to the
5 county landfill.

6 I can't remember who -- who's got these
7 containers. I believe Himco has got a container
8 out there, and Superior Waste has got a container
9 out there. Anything rubbish goes in that. They
10 come in with a truck and get it and haul it away.

11 Anything else that is iron, metal and that;
12 that's reclaimable. We -- we load that in a
13 gondola, and it goes back to the reclamation plant
14 at Hollidaysburg.

15 Q You've been out there a number of years. Have you
16 ever observed the disposal of, say, railroad ties
17 or railroad ties or something of that nature?

18 A Yes, sir.

19 Q And where would -- where would they have been
20 disposed of?

21 A Years ago -- and I don't know when it stopped or
22 when it started -- there's an old -- what we called
23 the dump. It's down on the north side of the
24 receiving yard, straight across from the Hump
25 Tower.

1 This map isn't really the way it's laid out,
2 but right in this area is -- there used to be a
3 dump.

4 Q Do you want to circle that with a "7" for us.

5 When you say a dump, was it a lowlying area?

6 A Yes, it was all swamp.

7 Q When you say swamp, you mean marshy? Wet?

8 A Marshy, wet; and it used -- just that was the name
9 of it. You know, "Pick me up at the dump." That's
10 where it was. We'd walk that far, our cut of cars;
11 and that's what we called it, the dump. And there
12 was railroad ties.

13 Q And anything else that went in there that you knew
14 of that was observed?

15 A Nothing.

16 Q That you observed?

17 A Not to my knowledge.

18 Q How about empty cans and things of that nature?

19 A Not to my knowledge. Everything was picked up in
20 the containers as far as I knew.

21 Q Was that ever filled in?

22 A Yes.

23 Q That area?

24 A Yes.

25 Q After -- it's a rough question, but when you first

1 observed -- strike that.

2 How long a period of time was that used for
3 disposing of the ties?

4 A I hired out in '72; it was a dump. When I left
5 there in '76, it was a dump. I don't really know
6 when they quit using it. It was after I come back
7 they had -- they had filled that in quite a bit and
8 leveled it off.

9 And I know that word was -- there was letters
10 put out that that is not no longer a dump, that
11 M & W Department would have to find another way to
12 dispose of their ties.

13 Q Did you ever observe during your course of
14 employment out there the disposing of old or
15 damaged tank cars?

16 A No, sir.

17 Q And something that was beyond repair?

18 A They were loaded up and other equipment and sent to
19 home -- sent home shop after that.

20 Q At any time during your career were you responsible
21 for purchasing equipment or supplies?

22 A I don't understand what you mean by -- by
23 responsible. I was the general foreman.

24 Yes, if I needed something, I told the
25 storehouse to get it. They'd purchase it. I would

1 never purchase it, no.

2 Q They would purchase it?

3 A Yes. If we was out of something, I would tell
4 them -- I'd pick up the phone, "We need this. We
5 need that." I mean, yes, I -- it was charged to
6 me, and I was responsible maybe for it; but I never
7 actually did the ordering of it or the purchasing
8 of it, no.

9 Q What type of products would generally be involved
10 other than, say, lube oil or something like that?

11 A Just about anything we needed to repair cars
12 with -- material. I don't quite understand what
13 you're getting at. You know, I was -- when I was a
14 general foreman, I was in charge of all of it. It
15 was all my -- under my area.

16 Q So if you needed various parts, if you needed
17 cleaners or solvents or soap, that would be your
18 responsibility?

19 A Well, yes. I'd pick up the phone and tell them we
20 were out of it. Nobody would ever -- I may not be
21 aware we're out of it until we didn't have it to do
22 the job. Somebody'd come and have to tell me we
23 were out of it, and I'd have to tell them to get
24 some.

25 Q During your experiences there, did you ever observe

1 the usage of chemicals?

2 A No, sir.

3 Q As part of the process? As part of either the
4 cleaning process or?

5 A No, sir.

6 Q No sprays? No --

7 A What do you mean by sprays?

8 We've got Windex to clean the windows with.

9 Q Anything else in a can that you observed for
10 electrical points cleaning or something of that
11 nature?

12 A Not in the Car Shop. Not that I know of.

13 Q You did not, yourself, or it was not your
14 responsibility to negotiate the contracts or
15 agreements with the waste disposal people, the
16 people that did the dumpsters and that sort of
17 thing?

18 A True.

19 It might have been our -- it might have been
20 my clerk who called to get one brought down there.

21 The new cleaning track facilities right now
22 that's -- we've got a dumpster there now instead of
23 using an outside contractor. They saved some
24 money. They put a dumpster there. Our people are
25 cleaning the cars now and putting it in the

1 dumpster. We call the -- we call the dumpster
2 place when it's full to pick it up and haul it
3 away.

4 Q Now, the term and the terms we use like hazardous
5 materials and such, that's, comparatively speaking
6 or relatively speaking, almost a new term if we
7 start going back to the 60's and 70's -- real
8 late -- real late 60's and early 70's.

9 Since it has become more prominent, has there
10 been -- have you hired any specific companies that
11 deal in waste disposal or waste materials?

12 A That I can't tell you. I don't know what you're
13 referring to disposing of. We're still using that
14 soap, and it's still being rinsed off in the same
15 manner it was back then. We're still using the
16 soap or whatever.

17 Q Has the company come out with any directives for
18 you to follow in the event that you come across
19 hazardous materials, that you know of?

20 A Well, yeah, I'm involved in -- in hazardous
21 material in a way. If we have a derailment or
22 something, I am one of the wreckmasters. We'll go
23 up and use the Data Speed 40 and punch the car
24 number in and see if it's hazardous.

25 If it's hazardous, we -- we had a hazardous

1 material supervisor. He's transferred out of
2 there. I really don't know who they've got in
3 place of him right now, who they're saying they're
4 in charge of it. But he was always the one if it
5 was hazardous material, he went and looked to see
6 if it was leaking, see if it was damaged in any way
7 that we couldn't go reraill it safely. Then I went
8 down with my people and rerailed it.

9 Q Who was he?

10 A E. W. Sharp.

11 Q E. W. Sharp.

12 Ed Sharp?

13 A Yeah.

14 They sent him to -- they sent him to Colorado
15 to tank car school and all that. He was our --

16 Q He was sort of the expert in dealing with --

17 A Hazardous material.

18 Q (Continuing) -- hazardous materials?

19 Okay. Did you have anything to do with
20 making the reports out where there was an unusual
21 incident of cars?

22 A At times, yes.

23 Q And as foreman, for example, who would get the
24 report? Who would you make the report to?

25 A As a foreman, the report was made out to the

1 general foreman. General foreman, in turn, sent it
2 to region or the division superintendent.

3 Q And where would they be located?

4 A Dearborn.

5 (Plaintiff's Deposition Exhibit No. 2
6 marked for identification.)

7 BY MR. RUVOLO:

8 Q I show you that's Exhibit 2, which I believe has
9 ten pages.

10 A Was I a general foreman at the time?

11 Q You have an interesting title at the time that I
12 can't wait to ask you about.

13 A Probably active. They done fired another one and
14 had me on the job.

15 No, wreckmaster.

16 Q Do you recognize that report?

17 A That's on top?

18 Q Yeah.

19 A That's a CT-65, yes, sir.

20 Q And on Page 2, which is blank, which is numbered
21 CO 1 -- well, okay. The first page is numbered at
22 the bottom, if you'll notice, CO 13508?

23 A Yes, sir.

24 Q And then it's continued 09 through 15?

25 A Okay.

1 Q Okay?

2 A Okay.

3 Q We'll use that as a reference.

4 508, the top page, is what kind of a report?

5 A That's a CT-65.

6 Q That's a CT-65.

7 A It's a report of an incident involving a hazardous
8 material.

9 Q And that took place at approximately 6:30 p.m. on
10 July 6th, 1981?

11 A Yes, sir.

12 Q Okay. Page -- at the bottom of Page 509 or the
13 second page, it has signature, "J. F. Hupp,
14 wreckmaster."

15 A That's me.

16 Q Do you recognize that as your signature?

17 A That's my signature.

18 Q As I said, I'm fascinated with the title.

19 What is -- what is a wreckmaster?

20 A Well, that's where -- that's where our job
21 bulletin -- that's the way the agreement is
22 proposed. That is a supervisor. I'm still a
23 wreckmaster in charge of the derailment or -- I
24 don't know whether this car was derailed or not. I
25 need to go further away. I don't remember it.

1 Q But the function of -- what I'm trying to get at is
2 what was the function of a wreckmaster?
3 A The wreckmaster is the supervisor in charge of the
4 rerailling operation, period.
5 Q Okay. And you -- if you'll notice the front --
6 going back to the front page, you filled out this
7 report, I take it?
8 A No, sir, not all of it.
9 Q Not all of it.
10 A I think you can see the two different handwriting
11 here.
12 Q Okay. Well --
13 A This is my -- this is my handwriting up on the top.
14 Q Up on the top is your handwriting?
15 A Yes.
16 Q So that the first -- one, two, three, four, five,
17 six, seven -- eight lines would --
18 A Yes, that's mine.
19 Q (Continuing) -- would be yours?
20 Where it shows two dark areas, that would not
21 be yours?
22 A Yes, this is not mine.
23 Q Do you know whose it was?
24 A No, sir, I don't.
25 Q Anything else up there?

1 Well, there is some dark writing down around
2 capacity and DOT specification.

3 That was not your handwriting?

4 A Where is he talking about?

5 No, right. All the dark -- that's just
6 about -- you're right. The dark stuff -- the dark
7 handwriting is not mine.

8 Q Okay. Where it says, "Estimated amount of lading
9 released," there's something crossed out.

10 That would be -- somebody else crossed that
11 out, or did you cross that out?

12 A That's my writing where it says, "50 gallons." I
13 don't know whether I crossed it out or not.

14 Excuse me.

15 Q That's okay.

16 And as far as the information down towards
17 the bottom; when it was built, what it was labeled
18 and such, that's not your handwriting?

19 A This "sulphuric acid" writing only looks like my
20 handwriting. I guess "corrosive" is my
21 handwriting.

22 Q And the cause?

23 A And the rest of it is not my handwriting.

24 Q And where it says, "Cause: heat expansion," is
25 that yours?

1 A I don't know.

2 Q And the rest of it is -- I can't read it.

3 A That's not mine. It's "flat" something; "flat used
4 pipe nipple," or something.

5 Q Yeah, that's not yours?

6 A No.

7 Q So you didn't fill in the cause?

8 Do you remember this incident at all?

9 A No, sir.

10 I'd like to leaf through the rest of the
11 stuff there. Maybe -- well, is there an MP-200
12 involved and?

13 Q Well, we're gonna' go through it.

14 A Okay. No, I trust -- right now, no, I don't
15 remember it.

16 Q Okay. Page 3, which is 510 -- 13510 --

17 A I don't know what that is.

18 Is that the back of this?

19 Q No, that's this page here.

20 But that has a signature or the name at the
21 bottom of M. E. Thimlar.

22 A Yes, sir.

23 Q Do you know who he was?

24 A Yes, sir. He was a -- he was a shift general
25 foreman probably at that time. He's been up the

1 ladder and down the ladder, and he is now off on a
2 disability.

3 Q And he would be the one that made out that diagram?

4 A Must have been.

5 Q Now, there's no date, of course, on this diagram.

6 Would you know probability that this would
7 have been drawn up after examination of the car?

8 A Yes, sir.

9 Q So it might have been a day or two, whatever,
10 later.

11 Now, is there anything on that diagram that
12 doesn't jive with what you found or made note of in
13 your report?

14 A No, sir. I didn't even know this diagram was
15 drawn.

16 Q Would you have sent your initial report to Thimlar?

17 A Yes. Yes, he would have been the -- he would have
18 been the shift general foreman.

19 Q All right.

20 A If I was the wreckmaster, so, yes.

21 Q So he would attach this diagram and send it to
22 wherever he sent it to.

23 Okay, the next page, which is 13511, is a Car
24 Failure Report.

25 A Yes, sir.

1 Q And that was -- it says on top, "Reported by J. F.
2 Hupp?"

3 A That's my writing up above.

4 Q Did you fill out this report?

5 A Yes, sir.

6 Q All of it?

7 A It looks like it. This part down at the bottom is
8 not mine.

9 So, in other words, I showed it -- under
10 remarks at the bottom it says, "Car was set out at
11 El TO 6. See CT-65." That's -- that's all I put
12 in there.

13 Q Okay.

14 A So, of course, if they came up with a cause later
15 on, that's somebody else's writing down there.
16 It's not mine.

17 Q So that the last line, it says, "Car into Elkhart
18 on train PIEL-6, heat expansion, opened dome
19 cover," that's not yours?

20 A No.

21 Q This car, according to this report, contained
22 sulphuric acid. Is that correct?

23 A Yes, sir.

24 Q Now, next to that it says, "Weight 80,000."

25 A Yes, sir.

1 Q And is that the weight of the car when it's full?

2 A No, sir. That's the weight taken off of the Data
3 Speed 40. In other words, if you punched a car in
4 the computer, that's the weight that they showed.

5 Q For that car?

6 A Yes, sir. All this is off -- this is information
7 gotten off of the computer.

8 Q Okay.

9 A We have no way of knowing that there was 80,000.
10 We don't have -- you know, there's scales to weigh
11 the car but.

12 Q Okay. But then it says, "Capacity." I think
13 that's a 7 -- 700,000.

14 The next line going to the left, do you know
15 what that means?

16 A Capacity is 200,000. That's a 200 pound car, yes,
17 sir.

18 Q Okay, 2. That's a 2.

19 So if that were liquid, that 200 -- the
20 weight of that 200,000 gallons, I presume it refers
21 to --

22 A 200,000 pounds.

23 Q Pounds.

24 That's not included in that 80,000, of
25 course?

1 A No, that's the capacity --

2 Q Of course.

3 A The capacity of the car is 200,000 pounds.

4 Q Okay.

5 A If you minus the light weight over there -- if you
6 look at it, 57,100; that's what the car weighs
7 empty.

8 Q Okay.

9 A You minus that off of the 200,000. Their load
10 limit would be allowed the difference of that.

11 Q Okay.

12 A They're saying -- the computer is saying there was
13 80,000 pounds of --

14 Q Sulphuric acid?

15 A (Continuing) -- sulphuric acid in the car.

16 Q Okay.

17 Now, according to your report -- I'm just
18 reading from it where it says, "Load," and
19 paragraph marked "load" on the left under
20 "caboose."

21 You say -- it says, "Shifted," and you're
22 saying, "No." "Evenly distributed," I think it
23 says -- and you say, "Yes." "A-B ends: okay,"
24 and, "R-L sides: okay."

25 Can you tell me what that means?

1 A Yeah. They're wanting -- this really doesn't
2 pertain to a tank car. That's for shifted loads,
3 flat cars. The springing information down below
4 pertains to that car, but what they wanted to know
5 is a lot of times if that would have, say, a
6 covered hopper, the commodity in there like grain
7 or something that wasn't liquid would stick to one
8 end of the car or stick to one side of the car, and
9 the car would not be sitting on the track evenly
10 like it's supposed to be.

11 Q I see.

12 What is -- what are snubbers or snubbing?

13 A That's a type of spring.

14 Q Type of spring. I see.

15 It says "Barber S2," I take it?

16 "Type side bearing: "Stucki." What does
17 that mean?

18 A That's the type of side bearing that the car has.

19 Q What does that refer to?

20 A Well, you mean, where does it --

21 Q What does Stucki mean?

22 A Stucki is a brand name.

23 Q Okay.

24 Attached on the next page, 13512, is a --
25 looks like a pre-prepared form?

1 A That's the bottom section of this Car Failure
2 Report.

3 Q Okay. So that's part of the --

4 A Then the car failure, what that's -- what that's
5 designated for -- you don't have the other side --
6 is you make out a car failure. The top section
7 gets made out, and then if it was a wheel failure,
8 axle failure -- you turn them over. There's
9 coupler failure. So this is different. This
10 report right here will take care of a whole car,
11 depending on what all fails.

12 Q And since nothing is checked in here --

13 A That's right. It's just --

14 Q (Continuing) -- it was not having anything to do
15 with the wheel or axle?

16 A That's right.

17 Q The next page is 13513.

18 Can you translate that for me?

19 A Yeah, that's going to be the print-out off the
20 computer. Up above, of course, the car number.
21 It's a load. I don't know these. Abbreviation
22 that come from River Rouge, Michigan, Allied
23 Chemical; or it was going there, one of the two.

24 Top row will tell you that it came from
25 Burgettstown, Pennsylvania; Allied Chemical going

1 to River Rouge, Michigan; Allied Chemical.

2 Contents, see it just says -- when we
3 print -- when we print that up, okay, we've got the
4 "SI-Dangerous," so that tells us we have a
5 hazardous car. So then you go by the stick code
6 that's off to the side of it and input the stick
7 code; and that should give you a print-out, which
8 it is right down on further; what to do, what
9 precautions to take.

10 Really, that's just a movement of the car
11 then in between where it says "movement
12 information." If you look where the asterisk is --
13 see the asterisk?

14 That is the last move of that car at that
15 time, whenever I put it at, which it was PIEL5,
16 Toledo, Meadville to Elkhart. So -- and that
17 asterisk is wherever the car was the date and the
18 time that I punched it into the machine.

19 Q And the stick number, which is 4930040 or 30040,
20 that's a code for?

21 A Hazardous material, yes, sir.

22 Q 49 is the hazardous material number, or is it -- I
23 mean, we were told 49 indicates hazardous material.

24 A Yes, it does. We don't really go by the stick code
25 until it says dangerous. If it says dangerous,

1 then we'll go ahead and put in the stick code.

2 Q Are there any other code numbers that indicate
3 hazardous materials?

4 A No, sir.

5 Q And the next page is a continuation of that. Tells
6 you what's in there?

7 A Let me try to see. Now, that's got to be part of
8 the -- now, see, I didn't do this. This has got to
9 be part of what happens, what the machine put out
10 when they inputted the stick code.

11 Q Have you seen -- have you seen this type of report
12 before?

13 A This one?

14 Q Yeah.

15 A Excuse me. Not only this copy. I've seen it on
16 the computer, yes. I brought it up and put it on
17 the computer.

18 I'm not concerned with that portion of it.
19 I'm concerned with this -- your back page, because
20 that will tell us what to do.

21 Q Okay. We'll get to that in a second.

22 But this is part of the -- part of the
23 system?

24 A Yes.

25 Q That explains the report in the system?

1 MR. RUVOLO: Would you like a drink of
2 water?

3 THE WITNESS: No, I'm all right.

4 MR. RUVOLO: Do you want a break or
5 anything?

6 THE WITNESS: No, I think I'm okay.

7 MR. ERMILIO: Are you sure?

8 THE WITNESS: I've got a bad stomach.

9 MR. RUVOLO: We've only got 12 more
10 hours to go.

11 THE WITNESS: I'm supposed to be at the
12 doctor at 3:30.

13 MR. RUVOLO: Okay, you'll make it.

14 BY MR. RUVOLO:

15 Q Okay, let's get to the last page.

16 That's the commodity code, right?

17 A Yes, that's -- look to the right. That's your
18 stick number inputted in under H-a-z up there with
19 the car number and there's an initial number.
20 H-a-z is hazardous -- abbreviation for hazardous in
21 the computer.

22 Then, of course, if you follow down, it will
23 give you the commodity code, which is the stick
24 code; and then it will tell you what -- what it is
25 and just list.

1 And then I fall down here for -- well, it
2 ° depends. If it's involved in a fire, you take that
3 portion. I take care of this personal protection.
4 I don't want my people down there until we know.
5 If it's not leaking, then I'm not -- you know, I'm
6 not as cautious, depending on whether it's -- what
7 kind of shape the car is in or where it's laying or
8 whether it's tipped over or whether, like you said,
9 your impact with your tank car.

10 So I am familiar with this form because I --
11 that's everything I punch in. This is what I want.
12 I want to see what to do if it's leaking, if
13 it's -- and this will tell you.

14 Q This will tell you how to handle --

15 A Yes.

16 Q (Continuing) -- the problem?

17 And in this particular instance, you use
18 limestone or crushed lime?

19 A We use lime.

20 Q Okay. Were you -- strike that.

21 Did you or do you recall preparing any other
22 reports of this nature of hazardous material spills
23 during your time as wreckmaster or general foreman?

24 A No, that's the form.

25 Q And this is the only one that you can recall that

1 you prepared or that --

2 A I prepare a --

3 Q (Continuing) -- you were involved in?

4 A I prepare a form called the MP-200, but really all
5 that -- this has got the same information on it.
6 The only thing that that's got on it that this
7 doesn't have on it would be the rerail times.
8 That's the form that we have to produce for the FRA
9 when they come at you or the AAR for derailment
10 reports. That is the report we have to have.

11 Q And how many of those do you fill out on an average
12 day?

13 A A day?

14 One or two.

15 Q One or two.

16 A year?

17 A Well, I'm not the only wreckmaster now, so it's
18 kind of neat. I don't have to do as many as we
19 used to, and we're not having the derailments that
20 we used to have, so.

21 Q And do you know where all these reports would wind
22 up or this report that you've prepared and Thimlar
23 assisted in? Where would they go next?

24 A Well, now we've got Panafax machines so now they're
25 Panafaxed to Dearborn with a copy on file at

1 Elkhart Yard. This is a copy of a copy probably
2 because the original probably was mailed to
3 either -- in 1981, I'm not sure.

4 Was we -- was we located in Chicago, or was
5 we located at Dearborn?

6 Anyway, it went to regional office and a copy
7 at Elkhart. Same way with the MP-200's. There is
8 a copy on file.

9 Q Would there be any regulatory agency that would
10 have to be advised since this involved "hazardous
11 materials"?

12 A Maybe not in -- maybe not back in '81. But now --
13 and, of course, that form revised, I would imagine
14 the newer form was revised at a later date because
15 I know I've made them out where -- where Chem Trek
16 or somebody would have been notified, which the
17 Transportation Department does it. It's written
18 right there.

19 Now, I don't know whether they were notified
20 or not, so I left it blank when I filled the form
21 out.

22 Q And Chem Trek is a company that removes hazardous
23 materials?

24 A Yes.

25 Q Do they remove it, or does another company?

1 I've heard of OHM.

2 A OHM -- they use OHM. There's three or four
3 different companies that Conrail has got contracted
4 to do this. Really, I think we notify Chem Trek.
5 Chem Trek will tell us.

6 Q Which one?

7 A Yeah.

8 Q The part that you didn't write on Page 1, the first
9 page, it says, "What assistance given by
10 shipper/consignee: the two men from Allied Calumet
11 City, R. B. Freud, I believe it is, or Froud and
12 Maintenance Planner and John Bonszek, maintains
13 Allied clerk," I guess.

14 You did not meet them, I take it?

15 A No, sir.

16 Q You had nothing to do with them.

17 Would they have gone to the Claims
18 Department?

19 A Yes. That would have been the Claims Department --
20 well, to my knowledge, that's who it would have
21 been. You know, depends on who up here we notified
22 and who notified them. If the transportation
23 notifies them, then they handle that, that part of
24 it.

25 If we get involved and we would have been

1 told who to contact, and then we would have been
2 the one that met with them when they came down.
3 They didn't meet with me. I'm not -- so I don't
4 really -- I can't really tell you who they are or.
5 I can read it. They're from Allied Chemicals.

6 Q But you did not --

7 A No, sir.

8 Q (Continuing) -- meet with them?

9 Now, this took place on July 6th, 1981.
10 Prior to that on February 3rd there was another
11 spill.

12 Are you familiar with that one?

13 A February 3rd of '81?

14 Q Uh huh. I'm not suggesting you made a report out
15 on it, so.

16 A I'm -- I'm familiar with a February, but I don't
17 remember what year it was. It wasn't back that
18 far. That's the only one that I'm familiar with
19 that I can really remember because they evacuated
20 the town of Elkhart or part of the town of Elkhart.

21 Q Which one? This one here?

22 A No, sir. No, sir.

23 Q Oh, the one that came at another time?

24 A Yes. But it's been a lot more recent than 1981.

25 Q Are you familiar with the manager of environmental

1 control people in Philadelphia?

2 A No, I'm not. I don't -- I don't personally have to
3 deal with them.

4 Q Do you know of a person by the name of F. L.
5 Manganaro, M-a-n-g-a-n-a-r-o?

6 A No, sir.

7 Q In September of 1981 there was another incident
8 involving a leaky bottom outlet cap.

9 Did you get involved in that report?

10 A No, sir.

11 Q The commodity was ethylene glycol.

12 Does that bring back any recollection?

13 A I hear names.

14 What year was it?

15 Q Same year, 1981, September.

16 Are you familiar -- familiar with a person by
17 the name of Joe Ledbetter?

18 A Yes.

19 Q How do you spell that?

20 A How do you spell it?

21 L-e-t -- L-e-d-b-e-t-t-e-r. He was one of
22 our shift generals. He was under me when I -- when
23 I came back in '79.

24 Q Now, at this time in '81 was he part of your
25 department?

1 A I don't really know when he -- when he left
2 Elkhart. He should have been there probably in
3 1981.

4 Q I hate to keep bugging you, but in November there
5 was another incident involving hydrogen sulfide
6 with some gaskets leaking.

7 Did you have anything to do with that or any
8 recollection?

9 A I might have. I remember -- I remember a top --
10 top gasket leaking, and I remember where we set the
11 car. And we had the people from Union Tank Car
12 come down, I think, and repaired that seal.

13 Q Do you know how it happened?

14 A No. It arrived in the yard in that condition.

15 Q Arrived in -- okay.

16 Do you know a gentleman by the name of
17 R. Onacki?

18 A Yes.

19 Q O-n-a-c-h-i?

20 A O-n-a-c-k-i.

21 Q C-k-i.

22 He was a trainmaster. What would his
23 function have been?

24 A He's probably the one that reported to us if he was
25 a trainmaster at the time.

1 Q Two days later another one. I hate to bother you.

2 Phosphoric acid spill. Defective dome
3 gasket, H. E. Biggs.

4 Do you know Mr. Biggs?

5 A Yes, sir.

6 Q Okay.

7 You had nothing to do with the reporting of
8 that?

9 A Probably not.

10 Q Did you see it on your machine or in your computer?

11 A No, sir.

12 Q Do you know how it happened?

13 A No, sir.

14 '82 was comparatively a light year. There
15 was one in February right around Valentine's Day,
16 February 11th, involving alcohol in bond?

17 A No, sir, I don't recall that one.

18 Q Would you have anything to do with the repair of
19 the car involved if it had a puncture in the head
20 of the tank?

21 A I might be involved in that tank car. If we -- if
22 the end was repaired, it wasn't repaired at
23 Elkhart. It was home shop depot on it or something
24 of that nature.

25 Q I'm not going to go through all of them. Just if

1 you can tell me some -- I can give you some names
2 if you could tell me--

3 A Right. You tell me the names, or if there are some
4 reports, I can tell you what they were.

5 You -- when you said Bob Onacki, he was a
6 trainmaster, and then he left, and he came back as
7 a -- he was our terminal superintendent also in a
8 period of time in here so don't act -- think I'm --
9 because I don't really know if he was a trainmaster
10 in '81 or whether he was our terminal
11 superintendent.

12 These names -- yes, I know just about
13 everybody that's ever been at Elkhart.

14 Q Okay. Up to -- up to now, the people I've asked
15 you about, are they still working with Conrail?

16 A Bob Onacki is still with Conrail.

17 H. E. Biggs is on pension. In fact, H. E.
18 Biggs is the only man that I know that's still
19 alive that's been at Elkhart his whole entire life.

20 Q Ledbetter, is he still --

21 A Ledbetter is -- I don't know whether he's still
22 working for Conrail or not. He's -- he was
23 non-agreement here, and he left as non-agreement.
24 I don't really know what he's doing now.

25 Q E. B. Erickson, is he familiar to you?

1 A Yes, sir.

2 Q Do you know what his function was?

3 A At that time he was our master mechanic. He is now
4 lines east superintendent. He's out in
5 Philadelphia.

6 Q He's out in Philadelphia.

7 And as a master mechanic, what would his role
8 have been in an occurrence or a spill?

9 A He worked out of Chicago. His office was in
10 Chicago. He was over the Chicago division as far
11 as mechanical was. He had Chicago, Elkhart, Fort
12 Wayne, Burns Harbor, Kankakee.

13 Since then this is all -- the divisions have
14 changed. It's no longer called the Chicago
15 division. It's the Dearborn division.

16 Q Right.

17 A But at that time it was the Chicago division.

18 Q We're talking about early 1980?

19 A Yes, sir.

20 Q 1981?

21 Okay. G. W. Gosser? Does he ring a bell?

22 A He was our shift general foreman at Elkhart.

23 Q Is he still there?

24 A No, sir.

25 Q D. D. Berkey?

1 A D. D. Berkey, no, sir, I do not know that name.

2 Q George Sefros?

3 A Yes. He was -- I believe he was the Claims
4 Department or the safety -- he was safety
5 supervisor, and then he ended up in the Claims
6 Department.

7 Q Did you ever work with him on any of these
8 incidents of spills or?

9 A No. He might have come to us for information,
10 copies of -- I know George. That's --

11 Q He worked out of Chicago?

12 Okay.

13 A He had a place up there in the trainmaster's
14 office, and he had a place downtown Elkhart when he
15 was the claims -- in the Claims Department.

16 Q Is there an H. E. Boggs?

17 A Boggs, no. H. E. Biggs, B-i-g-g-s.

18 Q B-i-g-g-s, okay.

19 Any other incidents or spills or occurrences
20 that you recall that we haven't discussed yet
21 today?

22 A The only incident that I can recall is the one we
23 had in February -- and I don't remember what year
24 it was -- when they evacuated part of Elkhart.
25 They received a tank car leaking, damaged in the

1 end from the Burlington Northern Railroad.

2 Q You don't know what was in the tank car?

3 A Yeah, it was -- I want to say hydrochloric acid.

4 MR. CUNNINGHAM: What's the time on that
5 one? Date?

6 THE WITNESS: February. I don't
7 remember the date and what year it was.

8 MR. CUNNINGHAM: 80's? 90's?

9 THE WITNESS: In late 80's.

10 MR. CUNNINGHAM: Sorry.

11 MR. RUVOLO: That's okay.

12 Just one or two more questions.

13 MR. ERMILIO: What's that?

14 MR. RUVOLO: Just one or two more
15 questions.

16 MR. ERMILIO: All right.

17 BY MR. RUVOLO:

18 Q Going back to Exhibit No. 1, which is the railway
19 yard, is there anything in the terrain or the
20 nature of the way the tracks are lined up that
21 would cause any one particular area to have more
22 accidents than another, say, in the humping
23 operation?

24 A Well, I don't quite understand what you mean. If
25 you mean do the derailments happen more in one

1 certain place than they do in the others, yes.

2 You've got the curves going into Groups 1 and
3 2, and you've got the curves going into Groups 7
4 and 8.

5 Q And Group 1 and 2 contain track numbers what?

6 A Groups 1 would be 1 through 9.

7 Q All right.

8 A Groups 2 would be 10 through --

9 Q 19?

10 A 19 -- 18.

11 Q 18.

12 And then the last two that you mentioned?

13 A Group 7 would be -- it's through 72, so what is it?
14 60 -- 64 through 72, and Group 6 would be -- that
15 would make it something through 63.

16 Q Okay. That would be the last 9 then, and that
17 would be the southern most portion of the yard as
18 we look at the exhibit?

19 A Yes.

20 Q Is it just the curves, or is there also -- and I'm
21 asking this from your recollection. Is there also
22 a problem with the amount of slope or decline?

23 A No, it's the same amount really on the slope or
24 decline.

25 MR. RUVOLO: I have nothing further.

1 Thanks, Mr. Hupp.

2 MR. CUNNINGHAM: Yeah, I have a few.

3 CROSS EXAMINATION

4 BY MR. CUNNINGHAM:

5 Q Mr. Hupp, I know you're in a hurry; and I'll try to
6 make it direct and clear, hopefully.

7 If you don't understand something, just let
8 me know.

9 Let's first go back to your first days at
10 Elkhart.

11 I understand that you were hired by my
12 client, Penn Central, sometime in 1972. Is that
13 right?

14 A Yes, sir.

15 Q And you were hired on and did your work at that
16 time at Elkhart sometime between '72 and '74. Is
17 that right?

18 A Yes. I hired out -- I mean, I was -- I worked from
19 '72 to '76 in Elkhart.

20 Q Okay. So, '72 to '76 in Elkhart, then Toledo? Is
21 that correct?

22 A Yes. Yes, sir.

23 Q Do you have any knowledge about anything that
24 occurred? And by that I mean, in the way of a
25 hazardous spill at the Elkhart Yard before you were

1 hired there in 1972?

2 A No, sir.

3 Q Have you heard about anything that occurred before
4 1972 from any of your co-workers?

5 A No, sir.

6 Q Okay. Do you know a Mr. Claude Brewton?

7 A No, sir.

8 Q I take it by the negative answer you didn't work
9 with him either?

10 A No, sir.

11 Q Okay, to your knowledge.

12 You talked about the use of -- during the
13 period 1972 to '76, soap for cleaning the Car Shop
14 floor. Do you recall that?

15 A Yes, sir.

16 Q And it's my understanding that you are aware of
17 scrubbing of that floor with brooms and hosing off
18 the soap into the stones. Is that right?

19 A Yes, sir.

20 MR. ERMILIO: I would like to object a
21 second to your characterization of the
22 material as a soap. I don't want my silence
23 to be --

24 MR. CUNNINGHAM: Sure.

25 MR. ERMILIO: (Continuing) -- taken as

1 going along with your characterization there.
2 He did refer to it as both a solvent and a
3 cleaner.

4 MR. CUNNINGHAM: Well, he also referred
5 to it as a soap.

6 MR. ERMILIO: And as a soap.

7 BY MR. CUNNINGHAM:

8 Q Okay. Do you know what that material was?

9 A No, sir.

10 Q You did also testify, as I understand it, that --
11 and I have my notes here I think are correct --
12 "Soap used now is still being used and broomed off
13 and hosed off as it was before." Is that right?

14 A Yes, we're doing it in the same manner now as we
15 did when I hired on.

16 Q Okay. You're not a chemist, understandably. Is
17 that right?

18 A That's correct.

19 Q The material that you refer to as soap in one
20 situation, did that require any use of protective
21 material by the people that used it or anything?

22 A Yes.

23 MR. ERMILIO: What time are we talking
24 about?

25 MR. CUNNINGHAM: We're talking about

1 1972 to 1976.

2 Q Is that right, sir?

3 A Yes, sir.

4 Q It did?

5 A Yes, sir.

6 Q Okay. What was the purpose of that?

7 A Because I was involved in putting it in. It would
8 eat the bottom of your rubber boots out, and it
9 would eat your rubber gloves up that you used. I
10 mean, it actually burned your hands or your skin if
11 you got it on you.

12 Q And do you know what kind of material that was?

13 A No, sir.

14 Q All right. Do you know what carbon tetrachloride
15 is?

16 A I don't have a definition of it, no. I've heard of
17 carbon tetrachloride.

18 Q You could not say, then, that this product was
19 carbon tetrachloride or not. Is that right?

20 A No, sir.

21 Q Where did the material come from; that is, the
22 material that was used that you refer to as a soap?

23 A Out of 55 gallon drums that the storehouse
24 purchased for us.

25 Q And who supplied that?

1 A The storehouse.

2 Q And do you know what it was called?

3 A No, sir.

4 Q When you ordered it, how did you order it? By
5 number?

6 A I didn't do -- I didn't do the ordering. If I told
7 them -- back then I didn't do the ordering, period.

8 Q When you needed something, who would -- who
9 would --

10 A Our general foreman would tell the storehouse that
11 they needed floor cleaner.

12 Q Okay. So that's what it was called, floor cleaner?

13 A Floor cleaner.

14 Q So if somebody was running low on that material,
15 they'd refer to it as floor cleaner?

16 A Yes, sir.

17 Q And the contents of that you don't know anything
18 about. Is that right?

19 A No, sir, I don't know what it contained.

20 Q But you say that that same material is being used
21 now? Is that what you testified?

22 A No, sir. No, sir, I'm not saying the same material
23 is being used.

24 Q Okay. How long was that material used, to your
25 knowledge?

1 A I used it up until I left in '76.

2 Q After that do you know what happened?

3 A No, sir.

4 Q Are you aware of what material is being used now so
5 as to say that it's not being used now?

6 A No, sir.

7 Q Okay. Let's talk a minute about the procedures
8 utilized by Penn Central with respect to reporting
9 of hazardous spills before you got there.

10 Do you have any knowledge about how things
11 were conducted, say, between '65 and '70?

12 A No, sir. Prior to me being an agreement supervisor
13 or a non-agreement supervisor, I have no idea what
14 kind of reports they used.

15 I will say that I worked for the Penn
16 Central. I transferred non-agreement in '76 for
17 the Penn Central, and we used, well, almost the
18 same forms.

19 Q In other words, you don't know specifically the
20 type of form that may have been used in '65 to '70.

21 Do you have a -- have any knowledge as to
22 what -- how that reporting occurred based on, oh,
23 let's say review of records during that period?

24 A No, sir. I've never seen any records that went
25 back that far.

1 Q Didn't have occasion to go back and --

2 A No, sir.

3 Q (Continuing) -- look at any records?

4 In '72 who was the terminal superintendent of
5 Elkhart; do you recall?

6 A The terminal superintendent?

7 Q Right.

8 A Fred Hamm.

9 Q H-a-m-m?

10 A Yes, sir.

11 Q And is he still living?

12 A Yes, sir.

13 Q And is he still working for Conrail?

14 A He is a yardmaster, the hump yardmaster. During
15 the day he's at Elkhart.

16 Q Do you know how long he had been there when you
17 came on board in 1972?

18 A No, sir.

19 Q Do you know who preceded him in that job?

20 A No, sir.

21 Q Do you know a Jim Page?

22 A Yes, sir.

23 Q Would it have been Jim Page?

24 A Jim Page was either the terminal superintendent or
25 the division superintendent right in there sometime

1 too, yes, sir.

2 Q And do you know whether he is still alive?

3 A I don't know.

4 Q Do you know where he is?

5 A No, sir.

6 Q A Mr. Stoner, does that ring a bell?

7 A Stoner?

8 No, sir.

9 Q Has there been any changes in track layout with
10 respect to Track 69, to your knowledge, over the
11 years?

12 A No, sir. That's one of the groups that was
13 extended at the end here. I mean, it was involved
14 in the extension, but as far as the track numbers.

15 Q All right. So there was some change there?

16 A Change as far as extending of the groups, yes.

17 Q All right.

18 A The track, itself, wasn't extended. The group was
19 extended, the layout at the end of it, the west end
20 of it.

21 Q You talked about some buried railroad ties in an
22 area that was referred to as a dump, but it's my
23 understanding that other than railroad ties, there
24 wasn't anything else there. Is that correct?

25 A To my knowledge, that's all that was ever put

1 there.. And they were not complete railroad ties.
2 They were stubs.

3 Q And I recall your testimony that that area we'll
4 refer to where the railroad ties were was that way
5 in '72 when you first came there. Is that right?

6 A Yes, sir.

7 Q And in '76. Is that right?

8 A Yes, sir.

9 Q And when you returned, it was still there. Is that
10 right?

11 A Yes, sir, to a certain degree. It had been
12 covered. Some of it had been covered over and
13 filled in.

14 Q Okay.

15 A And then they just told them to quit doing it, so
16 they quit -- they quit filling it in.

17 Q And you returned when?

18 A 19 -- late '79, early '80.

19 Q All right. You're familiar with and have testified
20 to, I believe, Unusual Occurrence Reports which you
21 were sometimes involved with which reports went to
22 Dearborn.

23 And would that same thing have been true of
24 the occurrence report in '65 to '70?

25 A They wouldn't have went to Dearborn, sir. They

1 would have went to Chicago. At that time we was
2 under the Chicago division. Western region was
3 located in Chicago.

4 Q 1965 to 1970 was controlled by Chicago?

5 A Yes, sir.

6 Q And do you have any knowledge of the reporting that
7 occurred during those years?

8 A No, sir.

9 Q On some of the forms there have been references and
10 questions to the weight, and an example of that is
11 Exhibit No. 2 where the capacity of weight is
12 80,000 pounds. Is that correct?

13 A Uh huh.

14 Q It's always referred to in pounds?

15 A Yes.

16 Q Which means that it's weighed at some point. Isn't
17 that right?

18 And that usually the -- is that right? At
19 some point usually the --

20 A It's weighed or the shipper -- shipper stated the
21 weight.

22 Q Right.

23 It's my understanding from previous testimony
24 given that the tank car, which is transporting
25 liquid material, is usually weighed at the origin

1 and at the destination. Is that correct?

2 A I can't swear to that. I've heard that, yes.

3 Q But it's generally not weighed at Elkhart. Is that
4 right?

5 A No, sir. No, sir.

6 Q In other words, Elkhart is just sort of a conduit,
7 a pass through area. Is that right?

8 A Yes, sir.

9 Q Is that correct?

10 A Yes, sir.

11 Q You refer to the computer and your use of the
12 computer. Tell me what you input in the way of
13 information having to do with hazardous materials
14 into the computer.

15 A I don't do any of the input.

16 Q I misunderstood I guess.

17 A No, I draw the information out.

18 Q But you don't put anything in?

19 A No, sir.

20 Q Okay. And what is generally the reason why you
21 take information out in a hazardous material
22 situation?

23 A Well, if it was involved in a derailment or it was
24 involved with any of my people going to have to do
25 any repair work on it, I want to know what's in it,

1 what's -- what I got to worry about getting people
2 around it, inhaling fumes or whatever, so that's
3 the only reason.

4 Q One of the reasons is to draw out information such
5 as contained on the last page of Exhibit 2 which,
6 if you'll take a look at, has a heading of
7 Hazardous Commodity Description?

8 A Yes, sir.

9 Q All right. And that's a safety feature so that
10 people don't get further damage if they're --

11 A Yes, sir.

12 Q (Continuing) -- actually in connection?

13 Have you ever seen one of these commodity
14 descriptions for carbon tetrachloride?

15 A I can't remember ever.

16 Q If I wanted to get that out of your computer
17 system, how would I do it?

18 A We need to go to the FRA book, look up carbon
19 tetrachloride.

20 Q First of all, what's the FRA mean? Federal --

21 A Yes. That's your federal regulations, your Title
22 49 book.

23 And look up carbon tetrachloride. Get the
24 stick code number that's out beside of it, and
25 input that stick code number.

1 Q And out will pop information about hydrochloric
2 acid?

3 A Yes, sir.

4 Q I'm sorry. Carbon tetrachloride?

5 A Yes, sir.

6 Q And if I wanted to get information about where that
7 might have been spilled if it was spilled at
8 Elkhart, how would I do that, or can you?

9 A Not unless there's been a report made out. We
10 didn't have computers. I mean, if there was a
11 spill, there should be a form or some kind of
12 report made out.

13 Q When did the computer process begin; do you
14 remember?

15 A Middle 80's.

16 Q Is there a name for the system that's used, or is
17 it just general computer system for Conrail?

18 A Well, that is the computer system for Conrail. We
19 call it the Data Speed 40, so I don't know whether
20 that's the brand name of the whole complete
21 computer system or that's what we call it there.

22 Q There is another system that's been referred to,
23 but from what I understand, it has nothing to do
24 with hazardous materials. That's the TRIMS?

25 A That's just part of the data system. That's just

1 part of the system. There's RNS system that we
2 use. We also use the TRIMS III system, yes.

3 Q Are those the only two?

4 A Those are the only two I use.

5 Q What other ones exist that you know of?

6 A There's -- there's a WIFIS. That's the payroll. I
7 don't know. There's a whole program.

8 Q There are other things not related to the kind of
9 case we're involved in?

10 A Yes, sir.

11 Q Apparently, the kinds of things we were interested
12 in in this case would be the one you've referred to
13 already. Is that correct?

14 A Yes, sir.

15 Q Know anything about or heard anything about buried
16 oil drums at all?

17 A No, sir.

18 Q Buried tank cars?

19 A No, sir.

20 Q Okay. Spills of carbon tetrachloride at all?

21 A No, sir.

22 Q Derailments involving tank cars carrying carbon
23 tetrachloride?

24 A Not to my knowledge.

25 Q Okay. Heard anything about it?

1 A I rerailed a lot of cars; but I've never, you know,
2 actually been told that that was carbon
3 tetrachloride, no, sir.

4 Q Do you know a Ted Berkshire?

5 A I know a Ted Berkshire, yes.

6 Q How do you know him?

7 A Well, we have a young Ted Berkshire working at the
8 Car Shop right now or working for the Car
9 Department. He's not in the Car Shop. He's out in
10 the train yard.

11 Q Have you talked to him about this case?

12 A No, sir.

13 MR. CUNNINGHAM: I think that's all the
14 questions I have.

15 MR. RUVOLO: Just a couple quick ones.

16 REDIRECT EXAMINATION

17 BY MR. RUVOLO:

18 Q That floor covering -- floor cleaner that you
19 referred to earlier, you mentioned that it -- you
20 had to wear boots or gloves, or what was it?

21 I wasn't aware of what you had responded.

22 A We had to wear -- put on rubber boots and rubber
23 gloves.

24 Q Is that because it would affect your skin?

25 A It would affect your skin, and it would eat the

1 hole -- eat the bottom of the boots off so, you
2 know.

3 Q So something was very acidic in it?

4 MR. ERMILIO: Objection.

5 MR. CUNNINGHAM: Objection to that.

6 You're an expert as a lawyer but not as a
7 chemist.

8 Q (Continuing) Did it have any aroma to it?

9 A No, sir.

10 Q Okay. As far as the railroad ties that were
11 buried, you said they were stubs?

12 A Stubs.

13 Q Stubs.

14 Had they been treated or are they normally
15 treated?

16 Not before dumping, but when you get them --

17 A To my knowledge, all railroad ties are treated.

18 Q What are they treated with; do you know?

19 A Creosote.

20 Q Creosote. And one final question.

21 What's the difference between -- strike that

22 What does a -- what does a crane operator do?

23 A A crane operator.

24 Q In regard to a derailment?

25 A He runs the -- he operates the crane. I give him

1 signals. He takes my signals.

2 Q So he would work under your department?

3 A Yes, sir.

4 Q No further --

5 A You said --

6 Q Go ahead.

7 A You said a crane operator. You're saying a crane
8 operator in the Car Department, I hope.

9 Q Yes.

10 A There's a crane operator in every department out
11 there that doesn't work -- necessarily work under
12 me or work at the Car Shop.

13 Q No, I'm talking about the crane operator who would
14 take care of a derailment or --

15 A Okay. Yes, sir.

16 Q (Continuing) -- get the car back on the track and
17 that kind of thing.

18 A Yes, sir.

19 Q Just one more.

20 It's been your experience since you've been
21 with the railroad, and that includes your time with
22 Penn Central, that railroads are generally
23 concerned about good record keeping?

24 A Yes, sir.

25 MR. RUVOLO: Okay, thank you.

1 MR. ERMILIO: I have a couple of
2 questions.

3 RECROSS EXAMINATION

4 BY MR. ERMILIO:

5 Q I want to go back to the floor cleaner you referred
6 to that was used from '72 to '76.

7 Did you describe all the protective gear that
8 was used? You mentioned boots, and I think there
9 was gloves. Was there any other?

10 A We had rain hats. We put on like a rain gear,
11 rubber rain gear, just to keep it off your clothes.
12 It really -- it really didn't bother your clothes
13 because I never got any on my clothes. But it did
14 burn your hands, and it did soften the rubber on
15 your boots. It would soften them. In other words,
16 you could just stretch them right out of
17 proportion. When you got done, you could almost
18 get both feet in one boot.

19 Q And was this used for any other purpose than
20 cleaning the floor of the Car Shop?

21 A Not to my knowledge.

22 Q When you returned to Conrail in '79, at least late
23 '79, you returned to the Car Shop?

24 A Yes.

25 Q Were they using a floor cleaner at the Car Shop?

1 A Yes.

2 Q Was it the same floor cleaner as the one they had
3 been using from '72 to '76?

4 A No, sir.

5 Q Can you describe the difference?

6 A No, sir. It's not -- it wasn't -- I mean, yes, I
7 can describe the difference. It wasn't as strong
8 of a floor cleaner, and when you used it -- the
9 stuff we use now, and that's the stuff we were
10 using when I come back, it'll foam more than the
11 other did.

12 In other words, when you actually broomed it
13 out or scrubbed the floor with it, it would foam
14 up, where the other didn't. It would just -- it
15 would just kind of like -- you could just see the
16 black stuff flowing off the floor with the other
17 solvent they used. But this is more like a soap
18 sud -- or like a soap suds when you would get a
19 soapy solution out of it.

20 Q Did you in '79 -- well, strike that.

21 Was the cleaner that was used in '79 the same
22 one that's used today?

23 A I believe so, yes, sir.

24 Q Do you use protective gear when you're cleaning the
25 floors?

1 A We still make them wear their safety glasses, but
2 they've got to wear their safety glasses at all
3 times anyway. And, yes, they still use rubber
4 gloves, and most of them still use rubber boots.

5 Q What is the purpose of those?

6 A Well, because it's so wet out there. You know,
7 they don't want to ruin their good shoes or their
8 good work boots.

9 Q Does this floor cleaner affect the rubber in the
10 boots and the gloves the way it did?

11 A No, sir.

12 Q Does it have any effect on them other than getting
13 them wet?

14 A Not to my knowledge. That's -- that's really why
15 we -- why we wear them is the rain suits and the
16 boots is to keep us dry -- keep them dry after --
17 so they go back to work after they get done
18 scrubbing.

19 Q Going back to '72 to '76, that period when you were
20 in Elkhart, did you work on cabooses at the yard,
21 the Elkhart Yard?

22 A Yes, I did.

23 Q Can you describe to me where that was done if you
24 can refer to Exhibit 1?

25 A I can use this one.

1 There's two cabooses -- there was two cabooses
2 tracks at Elkhart.

3 Q During '72 to '76?

4 A Yes.

5 Q Throughout that period?

6 A Yes.

7 Q Okay. If you could mark them "caboose track 1 and
8 caboose track 2" on exhibit -- mark that on Exhibit
9 1.

10 A See, they don't actually show this track. This is
11 the W-yard. It's in between the hump tower and the
12 W-yard. There's three sets of tracks up there
13 which aren't on this map, and it's called -- it
14 used to be -- it's still called the cab track.
15 It's called the western cab track. Why they called
16 it the western nobody ever knows because it took
17 care of the cabooses or the trains going west, I
18 believe.

19 And then down at the west end tower, between
20 the west end tower and the Car Shop and the west
21 end tower and the E-yard, there's a track down
22 there called "4 Lee." The building has been tore
23 down. That was our west end cab track.

24 Q Do you know when that building was torn down?

25 A That building was tore just -- just a couple of

1 years ago because we've been working our car
2 inspectors out of there for the E-yard.

3 Q Okay.

4 A They service cabooses there, and they service
5 cabooses at the hump. The hump -- the cabs that
6 were serviced at the hump went on the westbound
7 trains. The cabs that were serviced on this end
8 went on the E-yard -- on the eastbound trains.
9 That way they didn't have to take a caboose from
10 here clear over to here. They just -- they just
11 took them over here and put them on the train.

12 The hump did the same thing. He come down on
13 the cab track and got his cab, pulled back and
14 cabbed the train going westbound.

15 Q Okay. Could you identify on the map where each of
16 those with an arrow?

17 A Just about the --

18 Q An arrow.

19 A The track is not there. West end tower and the cab
20 track, so it's somewhere right in here
21 (Indicating).

22 And you want a number "A"?

23 Q You could -- well, if you could write "cab track"
24 to distinguish it.

25 A Hump Tower, Retarder Tower.

1 Q Did you work at these two cab tracks from '72 to
2 '76?

3 A At different times, yes.

4 Q Were the cabooses cleaned at those two locations?

5 A Yes.

6 Q Were these all Car Shop personnel working at the
7 cab tracks?

8 A No, sir, that was yard personnel.

9 Q So you were a yard personnel?

10 A Yes.

11 Q You were yard personnel?

12 A At that time, even when I worked the cab track.

13 Q Okay.

14 A Now, when you refer to clean cabs, what are you
15 referring to cleaning them?

16 Q Why don't you describe for me the cleaning that was
17 done on the cabooses?

18 A See, I don't -- I don't really know. They called
19 what they called was an E-cleaned caboose. We had
20 a program where they were trying to upgrade the
21 cabooses, and they actually washed them and cleaned
22 them.

23 Q Now, we're talking about '72 to '76?

24 A Yes. We did it after that. We did it up until the
25 time we got rid of cabooses. You still turned in

1 an E-cleaned cab.

2 I never participated in it. Third trick -- I
3 worked -- I never had enough seniority. I worked
4 third trick on the caboose track, and all I did was
5 service the cabooses. The daylight people, the
6 first trick people, had more time and more people.
7 They would try to get an E-cleaned cab a day, they
8 called it. And they used -- they used a cleaner or
9 something to clean the cabs, but I don't know what
10 they used.

11 Q Was it a liquid?

12 A Yes.

13 Q Was water used?

14 A Water was used, yes.

15 Q Was there a cement pad at either of these?

16 A Yes.

17 Q At which one or both?

18 A Both of them.

19 Q Were the cabs cleaned with a liquid while they sat
20 on top of the cement pad?

21 A Yes, sir.

22 Q Was there drainage?

23 A It was cement all the way along there.

24 Q Where would the liquids go? Was there a drain?

25 A No, just run down -- run down until it got off the

1 cement into the stone just like it does at the rip
2 track.

3 Q The rip track being at the Car Shop?

4 A Yes.

5 Q And you don't know what cleaner was used?

6 A No, sir.

7 Q Return to the Car Shop in your '72 to '76 period.
8 Were journal boxes cleaned at the Car Shop during
9 that time?

10 A Journal boxes.

11 Q Journal boxes?

12 A The interior of the journal box?

13 Q Yes.

14 A No, sir.

15 Q What about prior to that? Were the interior --

16 MR. CUNNINGHAM: What are we talking
17 about now? '72 to '76?

18 MR. ERMILIO: Yes.

19 A Years ago you had a waste. This is years ago.
20 This is back -- New York Central. I doubt if Penn
21 Central even seen waste.

22 Now, where you're getting this information
23 from cleaning journal boxes; yes, when they had the
24 old waste, they scraped it out, and they used a
25 solvent to clean the journal boxes.

1 Early -- late 60's, early 70's the journal --
2 they come out with a journal pad, a journal pad.
3 It's a presoaked pad that you pull the old one out;
4 put the new one in. You don't have no reason to
5 clean no -- no waste or anything like that. The
6 pad came out of the box.

7 Q So from '72 on, was there any cleaning of the --

8 A No, sir.

9 Q Was there any cleaning of the exterior of the box?

10 A Yes, we scraped the boxes on the FRA project.

11 Q Did you use any solvents?

12 A No, sir.

13 Q Any cleaners or soaps of any kind on them?

14 A No, sir.

15 MR. ERMILIO: I have no other questions.

16 MR. CUNNINGHAM: I have just one, I

17 think.

18 RE CROSS EXAMINATION

19 BY MR. CUNNINGHAM:

20 Q I think one of the questions I asked you before was
21 your knowledge of anything at Elkhart before 1972.
22 Do you remember that?

23 It's my understanding from that answer that
24 you gave that you don't know what happened at that
25 yard with regard to cleaning or anything else

1 before 1972. Isn't that right?

2 A No, sir, I don't. I mean, actually, I cannot tell
3 you other than we were talking about the interior
4 of that box.

5 Q All right.

6 A Yes, we had instructions of the old way. That's a
7 souvenir to people because it was on their NYC, and
8 it showed you the demonstration but.

9 Q As far as your knowledge, you don't know --

10 A No, sir.

11 Q (Continuing) -- what happened there?

12 MR. ERMILIO: Objection. He just
13 explained that he --

14 MR. CUNNINGHAM: He's answered he
15 doesn't know.

16 MR. ERMILIO: I'll object to that, all
17 right?

18 You're mischaracterizing his answer.

19 MR. CUNNINGHAM: Well, let's ask him
20 again.

21 Q Do you or do you not --

22 MR. ERMILIO: He just explained that he
23 had seen --

24 MR. CUNNINGHAM: Jim --

25 MR. ERMILIO: (Continuing) -- the

1 instructions.

2 MR. CUNNINGHAM: I'm asking him whether
3 he knows or doesn't know how anything was
4 cleaned.

5 Q (Continuing) Of your own personal knowledge, okay,
6 before you got to that yard?

7 A No, sir, I don't.

8 MR. CUNNINGHAM: Okay, that's all I want
9 to know.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. RUVOLO:

12 Q And that system was not used after you --

13 A No.

14 Q (Continuing) -- started with the yard?

15 A No, sir.

16 Q Just one question on this -- when you -- these two
17 areas that you mentioned and the previous one where
18 the car barn and the solvents to wash down the
19 grease and it flows out on the cement pads --

20 A Yes, sir.

21 Q (Continuing) -- do you -- do you know which
22 direction it would flow?

23 A This way it would -- this end would flow west.
24 This end would flow east (Indicating).

25 Q Are you talking about the car track?

1 A That's the cab track.

2 Q Cab track on the --

3 A That would be the west end cab track they call it.
4 It's by your west end tower.

5 Q Right. That would flow --

6 A That would flow west.

7 Q That would flow west.

8 A And everything from the cab track here flowed --
9 what do I want to say?

10 North.

11 Q North, okay.

12 And how about the other one?

13 A In fact, there's a drainage ditch over there, a big
14 drainage ditch that's been there for years.

15 Q And previously, your testimony earlier today, you
16 mentioned that the cement pads where they were
17 washed down and then went into the stones, the
18 crushed stones, et cetera.

19 What direction would that have been?

20 A Half the shop when we washed it down went west.
21 The other half of the shop went east.

22 Q Depending which way you pointed the hose?

23 A Yes, sir.

24 MR. RUVOLO: Okay, nothing further.

25 MR. CUNNINGHAM: Nothing further.

MR. ERMILIO: I have nothing further.

James Hupp

SUBSCRIBED AND SWORN to before
me this _____ day of _____,
A.D., 1993.

Notary Public, State of Indiana
County of Residence:
My Commission Expires:

CERTIFICATE

I, Teresa L. Gemmel, Notary Public in and for the County of St. Joseph and State of Indiana, duly authorized to administer oaths, do hereby certify there appeared before me at the said time and place, James Hupp, who was first duly sworn by me to testify the truth and nothing but the truth in response to questions propounded at the taking of the foregoing deposition.

I further certify that I then and there reported in machine shorthand the proceedings at said time and place; that the proceedings were then reduced to typewriting from my original shorthand notes; and that the foregoing typewritten transcript is a true and accurate record thereof.

I further certify that the deposition was read and signed by the deponent in the presence of a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, A.D., 1993.

Teresa L. Gemmel
Notary Public, State of Indiana
Residence: St. Joseph County
My Commission Expires 12-3-93